

BOARD OF WATER AND SOIL RESOURCES

Buffer Program

Comments Received on Preliminary Policies

June 27-July 27, 2016

Policy 1: Compliance Determinations (Parcel and Bank Approach)

Policy 2. *“Each bank, or edge, of a water body on an individual parcel will be reviewed independently to determine if an adequate buffer or alternative practice(s) has been installed.”*

COMMENT/QUESTION: Watersheds and surface water flow do not follow parcel lines. Although a violation may be on an individual parcel, the best place for an alternative practice to provide a comparable water quality benefit may not be on that parcel, but on an adjacent parcel. In this case is the landowner then required to install a buffer rather than an alternative practice?

Dodge County

Under Policy 1, is the status of “compliant” or “not compliant” going to be the same form for each county or is each county going to have to come up with their own form?

Douglas SWCD

MSGA urges BWSR to follow the current language of the buffer law that follows measurement of public ditch buffers under 103E. However, MSGA wishes that this policy would clarify the language regarding “the more restrictive of:” in the buffer law. Many landowners are confused about how the average would be measured regarding the average of 50 feet. Soil and water conservation districts have not been given guidance on how to determine the average and which scale should be used to determine this average. In addition, clarification of how the zoning ordinances derived from the state shoreland rules that include prior existing nonconforming use exemptions are to be balanced against the 50-foot average with a 30-foot minimum standard.

These questions should be dealt with in BWSR policy and not left to separate determinations by SWCDs across the state leading to a patchwork of standards and requirements.

Mn Soybean Growers Association

1. Who decides when a non-compliant site has been successfully addressed?
2. Can a WMO take sole management, implementation and enforcement responsibility to carry out all aspects of the law without oversight from the SWCD?
3. Guidance point #1 should be clarified to state clearly tax parcel as designated by the county assessor, if that is what they mean. It should be noted that this may be a reasonable unit for the LGU to use, but is likely a poor scale for landowners across the state, with different land ownerships. Tax parcels is likely not at an operational scale for many land uses.

4. Guidance point #2 – The term adequate buffer should be replaced with “compliant” in order to maintain integrity with the statute. The combination of this with #1 is not clear (i.e. the parcel is found compliant or not compliant, or individual sections of bank edge?). It is unclear how an alternative practice placed elsewhere on the parcel would be evaluated at the bank edge, please clarify.

5. Is there an appeal process (such as the BWSR WCA appeals subcommittee) for verification compliance?

Rice Creek Watershed District

The draft policy states that each bank, or edge, of a water body on an individual parcel will be reviewed independently to determine compliance. Acceptable methods used to determine compliance need to be outlined in the policy.

Mn Corn Growers Association

Policy 2: Reporting and Progress Tracking

Report and Policy Tracking: For those who do not use the compliance tracking tool, in regard to the progress reports to be submitted by the SWCDs, will there be a universal template developed by BWSR that should be followed? It may be useful to have a template developed in order to ensure BWSR receives all of the needed information. On the other hand, requiring counties to develop their own report template may encourage use of the already developed compliance tracking tool, which may be preferred.

Waseca County

Policy 4. “Starting November 2, 2018, ongoing racking of all parcels subject to the Buffer Law will be reviewed by the SWCD at least once every five years to ensure riparian protection continue to be in place.”

COMMENT/QUESTION: These are annual crops that are grown and once every five years will not be enough unless the landowner is enrolled in a conservation program. There is land disturbance in the spring planting and fall plowing that can destroy a buffer.

Policy 5. “Each SWCD will adopt a plan for ongoing tracking of compliance, posted to the SWCD website, no later than November 2, 2018.”

COMMENT/QUESTION: If reporting on the web is required, SWCDs shouldn’t provide too much detail or advertise that they are only going to be checking buffers once every 5 year. This just invites noncompliance for four years.

Dodge County

Policy 2 (general): References under the policy should be “that SWCDs and applicable MS4’s are required to provide reporting to BWSR to ensure they are tracking progress towards compliance.....

Policy 2 (4): Five years is too long between compliance verifications. Every two or three years should be the maximum amount of time between inspections. Compliance inspections will require a long term State funding solution for SWCDs; frequent compliance inspections will be the most important aspect to long term success of the program. For SWCDs with limited GIS capacity, use of the internet with google or bing maps produce aerial photography at two year intervals and can be used for checking compliance more frequently without conducting field inspections.

Policy 2 (5): More clarity is needed on what the components of a “Plan for Ongoing Tracking of Compliance” would look like at some point. Do we really want to advertise on SWCD web sites the plan for compliance inspections? Landowners who are inspected in year one, and then understand that the next inspection will not occur for five years may take advantage. Also, is there a comparable requirement on State websites for other regulatory programs such as WCA (BWSR), Feedlots (MPCA), or Protected Waters (DNR)? Would a non-compliant landowner have a stronger argument under enforcement proceedings that the SWCD determined his/her property to be in noncompliance outside of an SWCD Board approved plan for tracking compliance? Is the reference to SWCDs being required to post a plan for compliance inspections on websites identified within Statute?

Dakota County and SWCD

Under Policy 2, dates are established for progress reporting. I am wondering how these dates were established and why are we not reporting after the first deadline of November 1st, 2017? Maybe we should have a progress reporting date of November 15th or December 1st of 2017 after the first deadline and maybe on the same dates in 2018. It would nice to maybe have a small time gap from the actual deadline that the landowners have to meet and when we have to report it.

These are just a couple of comments, in general I think we are just looking for guidance from BWSR so that we can get all the information out to landowners as soon as possible. We(landowners/districts) want to have adequate time to look over these parcels and make the best conservation decisions that meet the requirements of the buffer law.

Douglas SWCD

Policy #2 – Will the information tracked either through the BWSR tracking tool or other methods that SWCDs develop be publically accessible?

Freeborn SWCD

Progress reporting by SWCDs should begin after November 1, 2018. While most required buffers will be in place well before the legislative timelines, it is unreasonable to ask the SWCDs to commit a high level of resources to reporting even while many of them are working to implement the legislation. It must also be recognized that landowners utilizing programs such as CRP need only be working on enrollment by the listed dates, with an additional year for buffer installation. We are also concerned about the potential resources required of SWCDs to utilize the BWSR Buffer Compliance Tracking Tool, given that nothing is known about it. BWSR should require only annual reports, beginning December 31, 2018. These reports should allow for and include a process developed locally to report tracking of parcels subject to the buffer requirements, as the workload will vary considerably across the state. Local governments and SWCDs should work together to determine the frequency of compliance inspections and tracking.

Minnesota Farmers Union, Minnesota Farm Bureau, Minnesota Land Improvement Contractors Association

Many SWCDs are woefully underfunded in the state. MSGA has members who have had problems getting assistance from SWCDs due to lack of staffing. MSGA is concerned with the aggressiveness of the reporting requirements laid out in this policy. It is unreasonable to ask the SWCDs to commit a high level of resources to reporting even while many of them are working to implement the legislation. MSGA believes that no reporting should be required by SWCDs until after all statutory implementation dates pass. This will give SWCDs time to focus on implementation of all buffers required by the legislation before taking resources away to focus on reporting. All resources should be focused on assisting landowners before the legislative deadlines.

We are also concerned about the potential resources required of SWCDs to utilize the BWSR Buffer Compliance Tracking Tool, given that nothing is known about it. BWSR should require only annual reports, beginning December 31, 2018. These reports should allow for and include a process developed locally to report tracking of parcels subject to the buffer requirements, as the workload will vary considerably across the state. Local governments and SWCDs should work together to determine the frequency of compliance inspections and tracking.

Mn Soybean Growers Association

Policy 1 – requires SWCDs to perform and track compliance; will the County’s ditch inspectors fulfill this requirement? Do we need some type of MOU to ensure that the SWCD is not thought to be in violation? Can the County’s record keeping fulfill the tracking requirement?

Policy 2 – reporting per the dates and reviewing parcels every five years; BWSR will create a tracking tool which allows the SWCD to avoid some early reporting dates – if the County tracks info along the public ditches, will there be a requirement for double-entries? Will this impact the waiver of the SWCD reporting dates?

Mille Lacs County

1. Who decides when a non-compliant site has been successfully addressed?
2. The policy appears to only address the reporting schedule and does not clarify what data is necessary for reporting. It suggests, that if the BWSR tool is used that the reporting requirements are simplified but does not clarify what the actual data required for reporting. As written, the policy implies that the act of reporting is all that is necessary to maintain funding, please affirm.

Rice Creek Watershed District

MS4 Exemption: Within the background section, it states that, “This provision provides an exemption.... If the following conditions are met: (3) The site is not inconsistent with the requirements of the state shoreland rules.” Should it also include the requirement to be consistent with county shoreland ordinances?

Waseca County

Much of this policy appears to be predicated on the BWSR Buffer Compliance Tracking Tool that is anticipated to be ready for use by September of 2016. It is difficult to comment on the merits of this policy without access to the tool. Tracking progress towards compliance is important to gauge the reasonableness of the timelines identified in the Buffer Law. However, this activity needs to be balanced with the demands placed on SWCDs to provide planning, technical assistance, and implementation of approved alternative practices as outlined in Section 103F.48, Subd. 6. In the absence of the tool, it’s difficult to evaluate the practicality of tracking progress and implementation of the water resource riparian protection requirements.

Mn Corn Growers Association

I am anticipating that to do this correctly, it will be an enormous undertaking – both financially and in terms of time for field work to measure buffers – for Counties/SWCDs. I think that the resources needed to make sure each landowner is in compliance is quite substantial, and most likely can’t be completed County-wide on an annual basis (Policy 4 under this Policy indicates that SWCDs will need to revisit a parcel once every five years – so basically, have a rotating 5-year schedule to review the entire County). A more efficient way to review parcels is possible, which would require some additional support from the state. At this stage of technology, GIS can review a parcel prior to planting and be able to differentiate buffer from row crop. Basically, a computer can do in a few days what would take five years for people to

do. Unfortunately, not all Counties are equipped with the specific programming needed or the personnel who have the training to run these types of programs (referring to spatial analyst). At some point, it may be in the best interest of the state to invest in this ability so that Counties can submit aerial imagery and have their buffer compliance calculated for them. If this were possible, it would free up staff time to go to specific landowners and work on compliance/enforcement.

Nicollet County

Policy 3: MS4 Exemption

Policy 3 (2b): How is comparable benefits measured and should there be subsequent guidance? Does this mean water quality benefit based on pollutant reduction calculators for phosphorus and sediment? If an MS4 wishes to pursue the exemption will there be timelines required like the November 2017 and November 2018 deadlines for others and will MS4's be required to post on their website a "Plan for Ongoing Tracking of Compliance"? If cities propose to do the equivalent under MS4, will inspection and maintenance be required at a specified frequency similar to other MS4 projects (i.e., structural stormwater BMPs)?

Brian Watson, Dakota County and SWCD

MSGa is disappointed to see that there is not the rigorous inclusion of all of the buffer "benefits" that we see being listed under other policies as alternatives for agriculture. NPDES/SDS permit holders should have to show that they have addressed all of the same benefits of buffers that a rural landowner has shown to receive approval for an alternative practice. Buffers are just as important as a bank stabilization tool inside an urban area as they are in some rural areas. By ignoring these benefits that are not covered in a NPDES or MS4 permit, BWSR treats rural residents differently than those living in urban areas by making them prove more regarding buffer benefits versus an alternative practice compared to those who have a permit rather than a buffer.

Mn Soybean Growers Association

Does this affect us? Does BWSR or the MPCA have a list of such permits that we can add to a dataset?

Mille Lacs County

1. This policy appears to extend decisions and jurisdiction beyond the scope of the law. The statute reads: Subd.

5. Exemptions.

Land adjacent to waters subject to subdivision 3 is exempt from the water resource protection requirements under subdivision 3, to the extent these exemptions are not inconsistent with the requirements of the state shoreland rules adopted by the commissioner pursuant to section 103F.211, if it is:

(4) regulated by a national pollutant discharge elimination system/state disposal system (NPDES/SDS) permit under Minnesota Rules, chapter 7090, and provides water resources riparian protection, in any of the following categories:

(i) municipal separate storm sewer system (MS4);

(ii) construction storm water (CSW); or

(iii) industrial storm water (ISW);

The proposed policy statement #2 asserts that the responsibility is on the MS4 community to do something to provide eligibility. When in fact the statute asserts that it is exempt already if it passes the tests outlined in the exemptions noted above. Additionally, the state shoreland standards cited at 103F.211 identify specific criteria for model ordinances as follows:

- (1) the area of a lot and length of water frontage suitable for a building site;
- (2) the placement of structures in relation to shorelines and roads;
- (3) the placement and construction of sanitary and waste disposal facilities;
- (4) designation of types of land uses;
- (5) changes in bottom contours of adjacent public waters;
- (6) preservation of natural shoreland through the restriction of land uses;
- (7) variances from the minimum standards and criteria; and
- (8) for areas outside of a municipality only, a model ordinance.

Item #5 implies that a community that has adopted and administers an approved shoreland ordinance is preserving the riparian zone through the regulation of land uses. In addition, the criteria in the state shoreland standards also provides for implementation flexibility, which allowed for local governments to adjust or deviate from the strict standards in the shoreland rules.

Lastly, the policy should clarify what “water resources riparian protection” beyond the water quality provisions of an MS4 permit would be. In effect, what would need to be included to be deemed appropriate? Since the buffer law is predicated on water quality improvements to the water body, it appears that there would need to be some effective measures for evaluation of existing MS4’s.

We recommend that the state (as the NPDES and shoreland approving authorities) need to make a specific finding that an MS4 is not in compliance with the statute and provide specific remedies that an MS4 community would need to take to bring it into compliance with the buffer law.

2. The MS4 exemption as it appears in the statute is ambiguous. One rationale for an MS4 exemption would be that land within MS4 jurisdiction already is subject to a regulatory stormwater management framework, and therefore already achieves goals sought by the buffer law. However, this rationale is complicated by the further requirement that the land must “provide[] water resources riparian protection (emphasis added).” In contrast to the shoreland protection law, the MS4 general permit does not mandate that an MS4 implement official controls requiring riparian measures, unless “riparian” is read broadly to refer simply to measures that intercept and/or remove pollutants from stormwater before it enters surface waters. Therefore, if the land must have alternative riparian protection in place to qualify for the exemption, it isn’t clear why land within MS4 jurisdiction may qualify for the exemption but other land may not. Any watershed district or city may adopt a rule or ordinance stipulating riparian measures, whether it is an MS4 or not.

3. Accordingly, further guidance would be helpful to explain the meaning of “riparian.” In common parlance, the term means physically adjacent to the waterbody. However, a functional definition also is possible. This sort of definition is supported by the 2016 addition to section 103F.48, subdivision 3(b)(2), which allows a property owner to substitute an alternative practice providing “water quality protection comparable to the buffer protection.” The added text states: “Included in these practices are retention ponds and alternative measures that prevent overland flow to the water resource.” The functional definition also aligns with the

principle that stormwater should be treated at the point of generation to the extent possible. If this meaning of “riparian” is applied to the MS4 exemption, then an alternative water quality practice that intercepts runoff before it enters the waterbody, and abstracts or treats it, would qualify as a “riparian” protection. This definition also would make better sense of the linkage to the MS4 general permit, which obligates the MS4 permittee to require stormwater abstraction and treatment.

4. The policy states that the exemption will apply if the MS4 permittee has “adopted and implemented a local official control that provides water resources riparian protection consistent with the Buffer Law.” The policy also states that the official control must be given to the soil and water conservation district (SWCD). Thus, it will also be helpful for BWSR to explain how this question of “consistency” with section 103F.48 will be decided. Does BWSR intend to review submitted controls and formally affirm that they meet this consistency requirement? Does it intend that the SWCD will do so? Or does it simply intend that “consistency” will be decided by the compliance agency (county, watershed district, BWSR) or the court in an enforcement action? (And if the latter, note that the question of “consistency” may be addressed differently in different jurisdictions.)

5. Similarly, it would be helpful for BWSR to offer further guidance to explain what the term “consistent with” means. For example, section 103F.48 applies the buffer requirement to all lands riparian to public waters and drainage systems, except for lands qualifying for a listed exemption. Conversely, most stormwater and buffer rules and ordinances of local government units apply only when triggered by the property owner’s proposed development activity or other proposed land disturbance. With such a land-disturbance trigger, most land parcels never will be subject to these requirements. BWSR should offer guidance so that local government units will know whether a stormwater or buffer requirement with a land disturbance trigger will be considered “consistent with” section 103F.48. If not, the “consistency” requirement, it seems, would ensure that the MS4 exemption almost never will apply.

6. The policy also would allow the exception if there has been “an MS4 sponsored project [that provides] comparable water quality benefit.” BWSR’s elaboration of this concept would help MS4 permittees and property owners understand its scope by answering the following questions:

- What MS4 involvement is required for “sponsorship”? A construction role? A funding role? Mere concurrence in a project’s concept or design?
- What constitutes “comparable” benefit? Are quantifications required? Must the comparable benefits be realized by the same waterbody or watercourse reach? And just like the above question regarding what is a “consistent” official control, who does BWSR intend will decide whether the benefit is “comparable”?

It makes sense that an MS4 such as a city or watershed district, by coordinating the construction and funding of improvements, can provide water quality protection to a waterbody that is more cost-effective than and perhaps superior to that resulting from individual landowner compliance with the buffer rule. If this is BWSR’s intent, however, BWSR should clarify its policy guidance accordingly.

Rice Creek Watershed District

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5. It would be helpful for BWSR to provide guidance on whether "consistency" with the buffer statute requires that the minimum buffer width in local rules or ordinances at least equal the 16.5 foot/50 foot requirement of the statute. It would also be helpful to instruct whether the exceptions to or flexibility within the local control must match the buffer law exceptions directly, or, for example, a showing of equal outcome on a larger geographic scale would be sufficient.

6. The policy also would allow the exception if there has been "an MS4 sponsored project [that provides] comparable water quality benefit." BWSR's elaboration of this concept would help MS4 permittees and property owners understand its scope by answering the following questions:

- What MS4 involvement is required for "sponsorship"? A construction role? A funding role? Mere concurrence in a project's concept or design?
- What constitutes "comparable" benefit? Are quantifications required? Must the comparable benefits be realized by the same waterbody or watercourse reach? And just like the above

question regarding what is a "consistent" official control, who does BWSR intend will decide whether the benefit is "comparable"?

It makes sense that an MS4 such as a city or watershed district, by coordinating the construction and funding of improvements, can provide water quality protection to a waterbody that is more cost-effective than and perhaps superior to that resulting from individual landowner compliance with the buffer rule. If this is BWSR's intent, however, BWSR should clarify its policy guidance accordingly.

7. BWSR should encourage MS4 engagement by further clarifying that an MS4 adopting relevant official controls or sponsoring projects is not thereby "exercising jurisdiction" so as to be subject to a loss of grant eligibility under section 103F.48, subdivision 8.

8. The BWSR policy is not a declaration of how BWSR will carry out its duties or exercise its discretion in implementing the buffer law. Instead, the policy purports to say how the statute's text should be understood. If there is a legal dispute about the applicability or scope of the MS4 exemption, it is not clear what force BWSR's interpretation will have: under established legal principles, ordinarily the judge will decide what the statute says and BWSR's view is of limited weight. However, implementing agencies and property owners both may assume that BWSR has the authority to say what the exemption means, and may rely on BWSR's statements. It would be useful for the policy to speak to the role of BWSR guidance and the reliance that implementing agencies and property owners may place on it.

Minnehaha Creek Watershed District

Policy 4: Alternative Practices Implementation

Another issue I would like clarification around is what sort of existing water quality protection measures will be accepted in lieu of the seemingly wasteful buffer strip proposal? Is a drainage ditch with berms on either side coupled with what was previously a CRP-accepted grass strip acceptable? The overland water never once breached the berm and the CRP strip would have filtered any runoff before it reached the ditch's banks. Are we being forced into a one-size-fits-all proposal or is this going to be further adapted to be looked at on a case-by-case basis?

Brian Sorenson

Will BWSR be sending SWCDs guidance on determining and applying alternative practices for buffers? We would sure like to have some guidance to help our staff provide recommendations on those options.

Traverse Soil & Water Conservation District/Traverse County

Policy 4. "Achieve water quality benefit via documentation of: (a) the assessment method used; (b) a map or diagram of the practices; and (c) documentation that the water quality protection is comparable to a buffer for the water resource it abuts."

COMMENT/QUESTION: Is there an assessment method or tool out there that allows a one to on comparison of practices for the sole purpose of water quality benefits? Is there an approved list of programs, assessments or methods that will be approved by BWSR for this purpose?

Dodge County

I currently farm land in Dunbar Township of Faribault County. This farm has been in the family for generations. I have some questions and concerns about buffer policy requirements that were stated to me by my regional DNR representative, Dan Girolamo.

In June, I saw the map used to determine 50 ft. buffers. A drainage ditch that was dug about 75 years ago, which drains approximately 1 sq. mile, was considered "public water" labeled as *shoreline*, and would require a 50 ft. buffer. I was also informed that there is an appeal process concerning that decision. I spoke with State Representative, Paul Torkelson, a member of the committee that drafted the buffer amendment. He stated that the amendment allowed for alternative methods, and not just "buffers", and that an appeal process existed. I was later informed by Dan that the New Ulm DNR would *not* review an appeal. I question why there is an appeal process when my appeal won't be considered.

As an alternative, I suggested making an earthen dike which would keep all surface water out of that ditch. The Soil and Water persons in Blue Earth stated that the DNR would not accept that solution.

The newest map being used for buffers now requires a 50 ft. buffer on currently productive farm land. A tile was put in an open ditch about 45 years ago, and put in based on water drainage requirements at that time. There is no surface water where that old ditch existed. The newest map indicates the need for a 50 ft. buffer here, also. Why is a buffer needed where no water is flowing above ground, nor is there any ponding in that area?

The BWSR's Policy concerning buffers states the following:

#1(page 2) Alternatives that may be accepted would be "proposed practices that may provide *comparable* water quality".

I believe that a dike for the *shoreline* portion, will provide comparable water quality. I also seriously question why a buffer is required on current farmland.

I appreciate your timely consideration of these concerns and questions. A phone call or e-mail to me, with your answers would be appreciated.

Bryan P. Stenzel

Regarding Policies 4 and 5 of the Buffer Law Implementation

Please clarify the water quality benefits of a Buffer so we may develop alternative practices that "provide comparable water quality benefits to that of a Buffer"

Katie Nichols, Grain Commerce of Southern MN

Policy 4 (4): This policy is going to get much debate and potentially abused if sideboards are not established. "Assessment Method" used – is that up to the SWCD on case by case basis or is that developed by the BWSR ad-hoc committee? Again, is this the BWSR pollutant calculators only? Will BWSR provide a list of acceptable assessment methods? There needs to be clear guidance on implementing the alternative practice provision including what the base line method is for establishing current conditions vs. post conditions under "alternative assessment". It may be these questions will be answered via Policy 5.

Dakota County and SWCD

Alternative measures should be included for existing buffers that will not meet the new law, but have been established previously.

#1 – if there is an existing WASCB with a hickenbottom tile intake is the tile intake considered untreated?

#4 – what assessment methods are preferred or allowable? What water quality parameters are we measuring to determine it is comparable (nutrient removal, sediment delivery, soil loss, bacteria removal)? If we measure multiple parameters does the alternative need to meet or exceed the water quality protection for all parameters?

Will the documentation and rational for specific parcels that choose to do alternative practices be publically available(If a complaint of no buffer is made on a parcel that has alternative practices, are we able to share with the complainant why the alternative is as good or better than a buffer?)

Freeborn SWCD

The policy as proposed is unworkable and unattainable. The Board must give consideration to buffer effectiveness and design needs across a wide range of climatic conditions. How much protection from erosion and runoff pollution is required? Are practices to be designed for a 10-year rain event or a 500-year rain event? How will stability of soils and banks be determined? Further, the documentation listed requires too much of SWCDs without ensuring resource protection. The SWCDs can gather the information necessary to insure proper adoption locally simply through their current processes, and can include a summary in their annual reports. Given that buffer effectiveness is very difficult to quantify in the first place, why hold the alternative practices to a higher standard?

Minnesota Farmers Union, Minnesota Farm Bureau, Minnesota Land Improvement Contractors Association

This policy sets forth a standard that is unattainable by landowners. This policy totally ignores the Natural Resources Conservation Service's guidance on buffers in their technical manual. BWSR should give consideration to a buffer's effectiveness and design needs across a wide range of climatic conditions.

Buffers will do very little to help stabilize banks along a bluff line on many rivers where undercutting and other geological process dominate. Establishing a vegetative buffer on a sheer cliff is not possible. To state that "no area within a parcel without treatment of runoff" without a measure of amount of treatment needed will lead to a patchwork of regulations on the landscape. Treatment for a 10-year rain event may be attained, but the same area in a 100-year event may not treat "all runoff." Just like we see cities unable to engineer treatment facilities for treating sewage to meet an event in excess of a 100-year event we would expect to see events that landowners are not capable of handling all runoff. If we accept the direct discharge of untreated sewage to our water bodies due to engineering capabilities, we should recognize these same engineering shortfalls in rural areas that need buffers. This policy leaves too many questions unanswered. Are practices to be designed for a 10-year rain event or a 100-year rain event? How will stability of soils and banks be determined? Why hold the alternative practices to a higher standard than the standards for a buffer in the NRCS technical manual for the slope and annual precipitation for an area?

MSGa believes that the SWCDs are best equipped to determine what alternative practices are appropriate for an individual parcel in their area. Those offices will have the best information on what a buffer's function is on the landscape in their area. SWCDs should be able to make these determinations and simply inform BWSR that the parcel is in compliance with no further reporting requirements necessary.

Mn Soybean Growers Association

Alternative practices; there should be a statement regarding redetermined ditches; the buffer requirement is not eliminated with the use of alternative practices for them. Who will provide the documentation regarding

the water quality benefit? SWCD, the landowner, the county, a third party engineer? Will there be an “appeal” process if SWCD says it doesn’t provide water quality benefits and the proposer objects?

Mille Lacs County

1. Guideline #1 extends jurisdiction potentially beyond the scope of the area that would have been contributing through a required buffer. The alternative practice must simply meet the requirement to provide water quality protection comparable to the buffer protection for the water body that the property abuts. (i.e. not all water on a parcel may have been treated by installation of a compliant buffer)
2. Guideline #2 is not supported by the statute as a compliant riparian buffer may not provide these functions in all cases based on landforms, soils, and stream order. The alternative practice must simply meet the requirement to provide water quality protection comparable to the buffer protection for the water body that the property abuts. These assessments should be approached by developing specific technical criteria for the site characteristics.
3. Guideline #3 appears to assume that in all cases an established buffer will stabilize soils and banks within the whole parcel. Since the measure of an alternative practice is in comparison to a compliant buffer we believe this is an over reach by the policy. Additionally, there are certainly streams in MN where a compliant buffer could be established, yet soils and banks may remain unstable due to other geomorphic forces such as altered hydrology, bluffs, cut banks, etc...
4. Guideline #4 does not provide a provision for what the standard of review or documentation needs to be. This leaves great room for inconsistency across jurisdictions and potential landowner confusion and risk. Although providing flexibility the way it is written, the local jurisdictions and landowners could find themselves in a position of not being able to consistently evaluate what constitutes compliance. We believe that BWSR needs to develop criteria for what is appropriate standard of review.

Rice Creek Watershed District

Alternative Practices Implementation: The policy states that the alternative practices must “demonstrate protection from erosion and runoff pollution, including suspended solids, sediment and sediment associated materials; and demonstrate stability of soils, and banks within parcels”. Will there be a method by which these can be demonstrated? Will the landowner be responsible for demonstration? Will there be a requirement to continue to show that the benefits are being met (reporting requirements after x amount of years??)

Waseca County

The water quality benefits provided by the riparian buffer at a specific site will depend on local topography, soils, and intensity, frequency, and duration of rainfall events. The policy needs to recognize this when evaluating whether the alternative practice based on the Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG) complies with the Buffer Law. The water quality benefit of the applicable riparian buffer needs to be clearly established for the site to ensure that the appropriate NRCS FOTG design standards are used. The water quality benefits expected of the alternative practice should not exceed those of the applicable riparian buffer.

Mn Corn Growers Association

My recommendation has been that for every 10 acres of farm land, there is a 1 acre holding pond. If a farmer has 100 acres, he has to have 10 acres of holding ponds, etc. They can use this water to help their crops and use the nutrients that are in there to help also. This would stop all of the bad stuff going into our streams and

lakes. Some have told me that it would be too expensive for them to get power and pumps in the ponds. I have told them that I believe there are grants that would help them with this.

Jim Mehrman

Policy 5: Other Alternative Practices Approved by the Board

Policies 1 through 4. *The entire policy section. See comments below.*

COMMENT/QUESTIONS: It appears that this process is supposed to allow other alternative practices by a blanket blessing by BWSR? Has there been any consideration as to volume of alternative practice requests that BWSR might receive from landowners? Will BWSR be approving different practices on individual parcels for landowners or a blanket approval provided certain conditions of the land are met? Regarding the ad-hoc technical team: Have these agencies committed their time and staff to this already? It appears that this process can take 180 days (90 days for convening the ad-hoc committee and 90 days to approve practice by the Board). That is 6 months. Do the deadlines for compliance still apply if the practice is under review?

Dodge County

Regarding Policies 4 and 5 of the Buffer Law Implementation

Please clarify the water quality benefits of a Buffer so we may develop alternative practices that "provide comparable water quality benefits to that of a Buffer"

Katie Nichols, Grain Commerce of Southern MN

Policy 5 (2): Ninety days to make a committee recommendation from receipt of a complete application seems long unless there is need to bring these to BWSR Board for approval. Recommend 60 days.

Policy 5 (3): There is no local unit of government listed as part of the ad-hoc technical team that may review applications submitted to BWSR requesting use of alternative practices outside of the NRCS – FOTG. Local staff representation is necessary akin to the WCA TEP process. The technical team needs to involve staff from SWCDs and counties or watershed districts that have accepted enforcement authority and will ultimately need to defend any noncompliance issues associated with the alternative practice provision.

Dakota County and SWCD

The make-up of the ad-hoc technical team should be changed to include staff from BWSR and

NRCS, along with several technical experts designated by the University of Minnesota, MASWCD, AMC, and the MAWRC.

Minnesota Farmers Union, Minnesota Farm Bureau, Minnesota Land Improvement Contractors Association

MSGa believes that the make-up of the ad-hoc technical team should be limited to those individuals with adequate education and experience to determine whether or not a practice meets the benefits of a buffer. Representation on the team should be changed to include staff from BWSR, NRCS, the University of Minnesota, Minnesota Association of Soil and Water Conservation Districts, The Department of Agriculture, and the Association of Minnesota Counties.

Benefits such as an increase in habitat that is sought by groups such as the Department of Natural Resources should not be considered as the landowner has the right to hay, graze and/or mow this buffer.

As such there is very limited if any benefit to a mowed lawn as a buffer that would meet the requirements laid out in statute. Inclusion of such biased personnel on this team would lead to perfectly sound alternatives being rejected for failing to provide a benefit that the buffer itself does not provide under statute.

Mn Soybean Growers Association

1. The policy does not provide a required amount of time for the Buffers, Soils, and Drainage (BSD) committee to make a recommendation to the board. Presumably this was an oversight, but we recommend that the committee be given a requirement to act in a specified timeframe. The BSD will have the benefit of the ad hoc technical advisory team review and recommendation. We believe that the BSD should be required to evaluate the recommendation generated by the ad hoc technical advisory team and make their recommendation to the BWSR board within 30 days of receipt of the ad hoc team recommendation or within 15 days prior to the next regularly scheduled board meeting, whichever is less. We also recommend that the board be required to take action at the next regularly scheduled board meeting rather than within 90 days. The process should not take in excess of 6 months to yield a decision.

2. We also recommend that the ad hoc technical advisory team be changed to a standing committee with consistent membership by staff with appropriate expertise. This will assure that the review of alternative practices will be consistent for the board and for those who are developing the conservation innovations.

3. We recommend that the policy also direct the BWSR to maintain a current list of approved practices on their website that is updated regularly as needed.

4. Would the creation and active implementation of a BWSR approved watershed management plan be a considered an alternative practice for the entire watershed under policy #5? What if significant planning, prioritizing and targeting has already been completed in a watershed /sub watershed and the BMP's that are deemed most effective do not include buffers? Are buffers still required in this case or how does program acknowledge this type of work which has already been done for several decades in metro watersheds /WMO's?

Rice Creek Watershed District

Prior approval should not be required for the installation of alternative practices to comply with the Buffer Law. The law states a landowner or authorized agent or operator of a landowner may request a validation of compliance but prior approval to install an alternative practice should not be required (Minn. Stat. 103F.48, Subd. 3(d)). The policy should identify information that will be used by the Board to determine compliance of the alternative practice which does not exist within the NRCS FOTG.

Mn Corn Growers Association

Policy 6: Local Water Resources Riparian Protection (“Other Watercourses”)

It would be helpful to SWCD's and their board members to have BWSR create or have accessible the criteria, or recommendation on how to address the “other waters” areas so that we know how best to target/review these areas for possible designation.

Big Stone Soil & Water Conservation District

In general, we agree with the draft policy provisions in this section. We would add a sixth point: the summary of local watercourses is to be maintained by the local water management authority and shall not be included on the DNR's buffer requirement maps.

Minnesota Farmers Union, Minnesota Farm Bureau, Minnesota Land Improvement Contractors Association

MSGA believes that this policy should include a sixth point that any summary of local watercourses should be maintained by the local water management authority and shall not be included on the buffer requirement maps.

Mn Soybean Growers Association

Policy 6 – other watercourses; what happens if there are no waters to include? It says “shall develop”; if there are none, should the SWCD adopt a resolution to that effect? Is there a method to ask for an extension: July 1, 2017 seems a bit of a short deadline, especially given that the map is scheduled for additional updates.

Mille Lacs County

1. Although the statute does not provide an oversight role of the process that SWCD's are to follow, we welcome the BWSR initiative to assure that the plans approved under 103B have had appropriate coordination and scrutiny, prior to action by the Board. We recommend that the board develop guidance that pertains specifically to how local water management plans will be reviewed for compliance with the statute, as it is presently unclear what is or will be required. The statute inserts two undefined concepts:

“...the soil and water conservation district shall develop, adopt, and submit to each local water management authority within its boundary a summary of watercourses for inclusion in the local water management authority's plan.” And; “...local water management authority that receives a summary of watercourses identified under this subdivision must address implementation of the soil and water conservation district recommendations...”

It appears to us to imply that the SWCD recommends waters to be included in the plan, and the local water management authority must consider the SWCD recommendations and address how they are included in their plan. It does not suggest what actions need to be taken. For instance, could a local water plan include the waters and not change any of its management strategies or other plan goals and objectives? We think that BWSR should provide guidance to local water management authority on what criteria will be used to approve amended plans.

2. What is the specific definition of “other water courses”? Performance measures are lacking to define what is relevant to include as “other water courses”.

3. Since these waters are presently excluded from the buffer requirements, we recommend that statement #4 focus solely on rationale for inclusion.

4. If a Watershed Dist. Decides to take on enforcement responsibility is that WD now also responsibility for implement requirements related to the “other water courses”.

Rice Creek Watershed District

This policy is consistent with the Buffer Law in that it maintains that the identification of watercourses to be included in the local water management authority's plan is solely a local function.

Mn Corn Growers Association

Policy 7: Failure to Implement (*Amended to replace Board Resolution 15-95*)

I am concerned with what funds will be cut off outside of the enforcement funds if the local drainage authority doesn't want to implement a plan of enforcement. Would the local SWCD also be affected by the drainage authority's actions? Would the SWCD lose potential grants because of lack of involvement with enforcement? Does the SWCD have to enforce the new laws of buffer?

Blue Earth County

Policy Need 3. *"The Board of Water and Soil Resources (BWSR) needs a clear basis for withholding funds from a water management authority or SWCD that fails to implement the law."*

COMMENT/QUESTION: Does this only apply to the SWCD implementation efforts where they have no enforcement responsibilities. Counties and/or water management authorities who elect "jurisdiction" are not receiving any additional funds for implementation at this time as the tax bill did not pass. If county's elect "jurisdiction", what funds are subject to withholding, as nothing has been allocated for enforcement of the law?

Statutory Basis: Funding subject to withholding. *"The board may withhold funding from a local water management authority with jurisdiction or a soil and water conservation district that fails to implement this section, or from a local water management authority that fails to implement subdivision 4. Funding may be restored upon the board's approval of a corrective action plan."*

COMMENT/QUESTION: Counties or other local water management authorities have to formally elect to be considered "with jurisdiction". Counties are not receiving any money to provide enforcement for these rules. There is no incentive for counties to elect to be considered "with jurisdiction". Does BWSR have enough staff to implement enforcement? What happens if the administrative penalty provision does not work?

If counties elect to enforce, what funding will be withheld if they fail to implement? Will counties have County Attorneys and judges willing to prosecute an individual for this violation?

There is March 31, 2017 date given for counties to elect to accept jurisdiction; however BWSR staff indicated that counties can choose to elect to implement or not to at any time by noticing BWSR. If that is the case, what is the purpose of the March 31st, 2017 date? It would make more sense for counties to wait until the state provides some sort of funding for enforcement rather than taking it on before.

Dodge County

Policy 7 – failure to implement; does a County Board resolution suffice as an "official control"? In zoning it doesn't, but maybe here it would. County Boards may not want to adopt ordinances relating to buffers unless it is merely to adopt statute by reference.

Mille Lacs County

1. Although the district does not intend to fail to implement its required duty, we recommend that the policy provide a due process provision that outlines how the board will notify, and act to resolve a failure to implement.
2. The policy should clearly state that BWSR will oversee the compliance of WD implementation using the established PRAP process.
3. Need clarification as to when and if a watershed district will lose funding due to the fact they are not implementing the Buffer Law.

Failure to Implement: The policy states that, should a county elect jurisdiction, they must “provide the landowner with a list of corrective actions needed to come into compliance and a **practical timeline** to meet the riparian protection requirements.” What would be considered a practical timeline?

Waseca County

Miscellaneous/Other Comments

The Minnesota Soybean Growers Association (MSGA) appreciates the opportunity to comment on the Board of Water and Soil Resources’ (BWSR) preliminary buffer implementation policies. MSGA believes that buffers are one of a number of important conservation tools that a farmer can use to protect his soil and to prevent input loss. We know through research that this is not the only conservation practice that can be used. It should not be looked at as the “be all end all” solution to challenges farmers face.

Buffers should not be prioritized over alternative practices that can provide better benefits to landowners and to water quality. These policies tend to unfairly place extra burdens on rural landowners to prove benefits of an alternative that have not necessarily been established as a benefit of a buffer in their area.

Landowners should not be looked at as having a duty to provide habitat in any circumstance. Further they should not have to prove bank stabilization where a buffer provides no stabilization. These policies should make clear to everyone involved that the priority should be on treatment of runoff at a level consistent with sewage treatment and prevention of that runoff from reaching a water body is always an alternative.

MN Soybean Growers Association

These are just a couple of comments, in general I think we are just looking for guidance from BWSR so that we can get all the information out to landowners as soon as possible. We (landowners/districts) want to have adequate time to look over these parcels and make the best conservation decisions that meet the requirements of the buffer law.

Douglas SWCD

In general, I appreciate the policies and guidance that BWSR has prepared. In order to have an effective program, it is imperative to give Counties and other Local Government Units guidance. That it comes from a state agency allows all Counties to adopt the same policy, which is critical for landowners with property in multiple Counties to have consistency across political lines. Additionally, guidance from the state is important so that Counties know what is expected of them in order to maintain funding.

Nicollet County

The policies adopted by the Board should ensure consistency in program implementation across the state without being too prescriptive. To ensure compliance with the Buffer Law, the policies need to be predictable, pragmatic, and executable by local government units across the state charged with implementing the program that have varying staff resources. The following are specific comments concerning the Buffer program policies.

Mn Corn Growers

Thanks for the opportunity to address the drainage ditch/buffer issue.

I believe Governor Dayton is somewhat confused on how the contamination/pollution is actually entering our county ditches. He seems to think the majority of water getting into the ditch is actually running over the top edge of the ditch. This is not true. I've lived with county ditch #9 running through the center of my property for the last 27 years and have never witnessed water running over the top edges. Although it may appear good to the public if they see a 16' or 50' buffer the real issue is the millions of feet of drain tile several feet underground dumping into the ditch along with all of the cities and towns dumping their storm sewer water (among other things) into the ditches. So in order for Governor Dayton to correct this issue, he will punish the property owners with the ditch on their property by forcing the buffer which will correct nothing. Many area farmers, including myself already plow their fields along the ditch and leave a 16" to 20" raised area between the field and the crest of the ditch so not to allow runoff to enter the ditch.

As stated earlier, I have lived on this ditch for 27 years and when I approach Soil and Water Conservation about removing trees in the ditch, I am told they do not have the funds to do so, or because I have a fireplace in my home I'm told to cut the trees down myself. The ditch is also full of noxious weeds (thistles etc.). Who is responsible for the maintenance? If I have these weeds growing in my pasture the township threatened me that if I do not address it they will and at my expense. And now Governor Dayton wants to confiscate still more of my property.

The county assesses everyone on the watershed that uses this ditch so please explain to me where all of those funds go. It certainly hasn't been used in my area.

James Grossinger

- Waseca County residents are unaware of the comment period. Waseca County and the State of Minnesota have failed to notify the public and property owners of the comment period ending July 27, 2016.
- Blooming Grove Rice Lake Mutual Ditch, a private ditch in section 22, Blooming Grove Township, was incorrectly named Crane Creek. This must be corrected.
- During the original compilation of the Public Waters List it appears only some county officials and staff had the privileges of keeping their private ditches and wetlands off the public waters list. This was approximately the time period of 1977-1987. Waseca County did not notify property owners and give them a chance to negotiate with the State of Minnesota.
- The Moonan Marsh and Watkins Lake Dam have been an ongoing issue for years with a permanent concrete stop plank replacing wood planks that were manipulated by unauthorized county residents. This water control causes flooding up stream. The DNR, along with the public, need to achieve the original purpose of the "Crane Creek Watershed Project"

Karen Roessler

It has recently come to my attention that there are changes proposed to some of the buffer laws, however I was only made aware of these because a neighboring property owner notified me. I am disappointed that proposed modifications to laws which will impact me were not brought to my attention directly. I live in Waseca County and have been previously unaware of any comment periods.

The reason I am writing is due to several concerns over Blooming Grove Rice Lake Mutual Ditch. One issue is the incorrect naming of this private ditch: Blooming Grove Rice Lake Mutual Ditch in section 22, Township 108 Range 22. Blooming Grove Township, Waseca County MN. The name "Crane Creek" is the official name of JD #24 of Waseca and Steele counties, the PL 566 Crane Creek Watershed Project, which was already in place when the DNR incorrectly named our private ditch in the PWI list procedure.

Neither I nor any of our neighbors, nor any member of our mutual ditch group, were notified of the PWI procedure taking place. Because of not being aware of what was happening, we were not given a chance to

be a part of the discussion or raise this issue previously. All affected land owners should have a part in any procedure affecting their property.

I respectfully request that the natural and altered watercourses "Crane Creek, Section 22, Township 108, Range 22 to section 1 Township 107, Range 22" and "wetlands name and number 81-111, unnamed, Section 28, 29, 30, 31, 32, 33 Township 108 Range 22" Waseca county be removed from the PWI list immediately and permanently.

I am providing this information to you during this comment period to bring to light the particular issues related to my situation. This is a single example of the complexities and potential significant implications which the buffer laws will have if the PWI is not carefully reviewed and appropriately corrected. Thank you for considering these aspects in your decisions.

Mathias Gregor

All the policies, programs, rules, laws; unenforceable. What value?

I'm Clint Hertle, 83 years old lived and raised my family in Mower County USA. I presently live on the Cedar River (40 years) and own farmland. I'm retired 24 years, in good health, and feel qualified to share an idea:

Use modern technology drones (take pictures annually of buffer strips), GIS to measure them, letter and picture to landowner; of compliance or noncompliance (subject noncompliant to a higher tax rate)

Estimates

Drones \$500
GIS (most counties has one)
Man power 1-2 (\$25 per hour)
Pick-up Truck \$25,000
Office and personal \$50,000

Clinton C. Hertle

Here are my comments pertaining to the Blooming Grove Rice Lake Mutual Ditch.

Comment 1

Re: The Grossly Inadequate Notification Procedure for the Comment Period

Waseca County and the State of MN have failed in notifying the public and the property owners of the comment period. There has been NO effort at all to notify the citizens in Waseca County of this or the of the first comment period. Waseca County residents are unaware of the comment period.

Comment 2

Re: Wrongful Naming of Private Ditch: Blooming Grove Rice Lake Mutual Ditch in section 22, Township 108 Range 22. Blooming Grove Township, Waseca County MN

The name "Crane Creek" is the official name of JD #24 of Waseca and Steele counties, the PL 566 Crane Creek Watershed Project, which was already in place when the DNR named our private ditch in the PWI list procedure. State law prohibits the duplication of names. The state violates its own laws.

The incorrect name MUST be corrected.

Comment 3

Re: The Original PWI List Procedure

The original PWI list procedure took place starting about 1977 and concluded on July 7, 1987. In that 10 year time table, the counties were allowed the privilege of negotiating with the state as to the list that was provided to them from the state. Neither I nor any of our neighbors, nor any member of our mutual ditch group were notified that this procedure was taking place. Because of NOT being aware of what was happening, we were not given a chance to be a part of the negotiations. We certainly would have taken part, had we known.

But certain county commissioners did successfully have their private ditches and wetlands kept off the PWI list. They did NOT accord the same privileges to the majority of the property owners in the county. This was very inappropriate behavior. All affected land owners should have had, and should now have, a part in any procedure affecting their property. It seems that government staff felt they should be the only ones privy to special privileges.

Therefore, we demand that the natural and altered watercourses "Crane Creek, Section 22, Township 108, Range 22 to section 1 Township 107, Range 22" and "wetlands name and number 81-111, unnamed, Section 28, 29, 30, 31, 32, 33 Township 108 Range 22" Waseca county be removed from the PWI list immediately and permanently.

Comment 4

Re: Moonan Marsh and Watkins Lake Dam

Moonan Marsh, built by PL566, "Crane Creek Watershed Project", a US federal project, has become a man-made obstacle right in the middle of a natural water course. The Watkins Lake dam, having a permanent concrete stop plank because of unauthorized people manipulating the wood planks, and the DNR controlling water levels substantially above the original set levels in PL566, have resulted in flooding all areas above (upstream) this natural water course system. This has been an on-going battle between the property owners and DNR ever since Moonan Marsh (Crane Creek Watershed) was completed. It's time for DNR to start working with the public to finally achieve the original purpose of the "Crane Creek Watershed Project".

Comment 5

Re: The Name "Crane Creek"

The name "crane Creek" was officially placed on our private ditch on July 7, 1987. This means that the duplicated name does NOT meet the 40 year rule and MUST be corrected to either "unnamed" which DNR refers to it as, or "Blooming Grove Rice Lake Mutual Ditch". Furthermore, the Waseca county official maps show "Crane Creek" in the bed of the waters of both Watkins Lake and Rice Lake. Those same maps show "Crane Creek" as an open ditch connecting our private ditch (the Blooming Grove Rice Lake Mutual Ditch), through Finnely Marsh to Rice Lake. This is absolutely, 100%, fraudulent data.

Comment 6

Re: Denial of Permit to Maintain our Legitimate Drainage System

Since November 12, 2012, the DNR permit 2013-0668 and its additional amended permits, as well as the June 23, 2014 contested case pre-lim meeting, our ditch group has been denied permission to perform maintenance and repair of the outlet portion of our ditch which ends in the Finnely Marsh (approximately 1900 feet). We have NOT received a single legitimate reason for these denials which is required in the application process.

Comment 7

Re: Perfect Natural Filter System

Our private ditch outlets into the Finnely Marsh, and ends there, thus resulting in a positive, natural filtering system, prior to reaching Rice Lake, thus NOT contributing to any negative effect on our environment.

Clint Selvik, Blooming Grove Rice Lake Mutual Ditch

I am submitting the following comments on behalf of the Blooming Grove Rice Lake Mutual Ditch Group.

1. The current procedure of notification to the property owners is grossly inadequate. The vast majority of the property owners who are directly affected by the new buffer law are unaware of what is happening to them. There MUST be funding so that affected owners receive direct, personal notices of all activities.
2. Taking any land MUST be compensated by the new law, by the state.
3. Federal buffer strip programs will not allow addition to existing CRP buffers and be enrolled in the CRP program. Additional footage is ineligible for those program benefits, ineligible for cost share to install. These mandates force removal of row crop, taxed ground from production, allowing only haying or grazing on additional footage. Therefore, a proactive farmer trying to be a good steward of his land, protecting water quality, preventing soil erosion, reducing sediments, and filtering out chemical and fertilizer from the water is going to be penalized because the state will not make allowance. Alternative practices should be allowed on additional footage i.e. strip till, no till, conservation practices, versus seeding. For example, 33' buffer has been in place for 25 years, now an additional 17' has to be added and is not eligible for cost share, or any program benefits.
4. Property real estate tax relief MUST be provided.
5. Alternative measures MUST be included for existing buffers that will not meet the new law, but that are and have been adequate under present federal programs.
6. All government agencies MUST be on the same page (i.e. the same specifications by all department of government, whether they are federal, state, or county). Different rules and parameters from sister government agencies only shows how uncooperative these agencies are with each other.

Please advise on what avenue to take in order to address the additional comments.

1. The original PWI list procedure took place starting about 1977 and concluded on July 7, 1987. In that 10 year period, the counties were allowed the privilege of negotiating with the state as to the list that was provided to them from the state. Most property owners were not aware that this privilege was taking place and were, thereby, denied the opportunity to negotiate as to the pending potential status of their private ditches. There were certain county commissioners who did have their private ditches kept off the PWI list, thereby reserving the special privileges only to themselves. That was NOT right and totally unfair – discrimination! So please take the Blooming Grove Rice Lake Ditch off the PWI list.
2. Moonan Marsh, built by PL566, “Crane Creek Watershed Project”, a US federal project, has become a man-made obstacle right in the middle of a natural water course. The Watkins Lake dam, having a

permanent concrete stop plank because of unauthorized people manipulating the wood planks, and the DNR controlling water levels substantially above the original set levels in PL566, have resulted in flooding all areas above (up-stream) this natural water course system. This has been an on-going battle between the property owners and DNR ever since Moonan Marsh (Crane Creek Watershed) was completed. It's time for DNR to start working with the public to finally achieve the original purpose of the "Crane Creek Watershed Project."

The Blooming Grove Rice Lake Mutual Ditch outlets into the Fennely Marsh and ends there, thus resulting in a positive, natural filtering system, prior to reaching Rice Lake. Thus, it does NOT contribute to any negative effect on our environment. Since Nov 12, 2012, the DNR permit 2013-0668 and its additional amended permits, the Blooming Grove Rice Lake Mutual Ditch, have been denied permission to perform maintenance on repair on the outlet portion (the final approximate 1900 feet) without a single legitimate reason for these denials, which is required in the application process. Routine maintenance and repair MUST be allowed.

Blooming Grove Rice Lake Mutual Ditch Group.

In regards to a recent article in the Mankato Free Press on Buffer Strips, I would like to propose an alternate. I have lived on the SouthWest shore of Madison Lake for over 20 years, and it seems the lake is getting worse every year. The algae and other weeds that make it look brown and green, and stink. The lake used to be clear and fun to get into. Now, I do not let my dog get in the water and have a tough time keeping all of the weeds from clogging up my boat propeller.

I have mentioned my idea to farmers and other DNR people and our Lake Association. I would like to see all water from farm fields be closed off from flowing into the lake. There is a culvert next to my house that is putting a lot of the farm nutrients into the lake when there is a rainfall. It flows in all brown and muddy.

My recommendation has been that for every 10 acres of farm land, there is a 1 acre holding pond. If a farmer has 100 acres, he has to have 10 acres of holding ponds, etc. They can use this water to help their crops and use the nutrients that are in there to help also. This would stop all of the bad stuff going into our streams and lakes. Some have told me that it would be too expensive for them to get power and pumps in the ponds. I have told them that I believe there are grants that would help them with this.

Also, what ever happened to the use of Copper Sulphate? I was raised in Northern Minnesota, and we used that to keep the lake clear. It did not affect us for swimming and did not hurt the fishing.

Thank you for taking comments, I hope we can get this problem cleaned up.

Jim Mehrman

We are landowners/farmers in Ottertail County, Minnesota. The Buffer Law is explained to us in letters with maps attached from the Ottertail County Board of Commissioners and West Ottertail Soil and Water Conservation District. On three parcels of land, we have a total of approximately 8,294 feet of lake shore, most of which has substantial coverage with cattails or bulrushes which apparently cannot be called part of a buffer.

This has great financial impact for us. Multiplying the distance of lakeshore on our property by the required fifty feet in order to establish square feet, and then dividing that by the 43,560 square feet in an acre, this shows that we will lose approximately 9.52 acres of tillable land. In speaking to a local realtor about that land, he told us that for sale purposes, this buffer area has no value. Therefore, we are losing approximately \$30,000 worth of land without compensation. We are farmers; we need this land to produce a crop to provide family living and investment in our business.

Another part of the buffer law that troubles us greatly is that everyone affected by this law is considered guilty. There has been no evidence shown to us that the water on our properties are polluted and that we are responsible. We consider our land, the surrounding waters and air entrusted to us to be passed on in an environmentally sound condition to the next generation. We have worked to change our farming practices beginning decades ago to stop or slow erosion. There is no moldboard plowing, and minimum tillage is practiced. Grass waterways and contour tillage of hills minimize erosion. We continue to learn how to do more by reading, interviewing people, and considering new practices. We soil test and zone fertilize at rates recommended by the University of Minnesota and our crop consultants. Now we are working to create/restore thirty acres of native prairie that borders a lake on our farm.

In spite of these efforts to protect the land and water, we are being penalized by this draconian law. If we are responsible for polluting waterways, then we would consider this law as just.

Stan and Shelley Overgaard

1. This is a very complex law that is being implemented too quickly. Ten years is more realistic.
2. The time line is way too short even for the government agencies that are part of the process.
3. DNR maps are not anywhere near finished.
4. Long term funding to the landowner is not being addressed.
5. The funding that is available is from the Federal Government not the state. Will they always work together?
6. Thankfully NRCS is the managing agency for the law. They are the experts.
7. Long term effects of the buffer law need more scientific study.

Eric Zurn

I am submitting my comment on the upcoming buffer implementation.

Myself and my neighbors have submitted comments and have requested on site reviews of some declared public waterways that cross our property and have not had much response.

I fully believe that these comments will be ignored also.

The state authorities in charge of this implementation keep talking about how the local SWCD's will have great input into the implementation of these programs. The only thing they fail to inform the public is that they will be the agency setting very tight parameters on what is acceptable for the proposed buffers so the net effect is that the local SWCD's will have very little latitude in dealing with any specific issues.

I believe that the local SWCD's and county government (elected representation) should have the ultimate decision in whether a buffer is necessary and the requirements for that buffer.

We have a one half section of farmland that will be required to have three acres of land taken out of production for a proposed buffer, that in its current state, there is no chance that one drop of runoff could enter the waterway. Yet because this is an all encompassing statewide law with no provisions for common sense, four acres of land in this section (.6% of the section) will have to be idled and there will be no benefit to water quality as there is a 0% chance of any water entering the waterway from the buffer or the adjacent farmland.

We stand to lose 1% of our farmland to this program. It is wonderful that legislatures and public employees feel validated and rewarded that they are doing some good for our state's water quality, but they fail to measure the individual benefits of each situation or the financial consequences to the landowners. Our family stands to donate well over

\$100,000 to this cause.

I believe that there are many locations where water quality benefits will be realized. It is necessary to investigate and consider the water quality benefits or lack of benefits in each individual circumstance so as to not unnecessarily remove productive farmland. The net cost to society let alone the individual property owner would be great if this law were to be implemented as planned. It is completely necessary to include an economic analysis of individual situations to be sure that land that is removed from production will have a net positive effect.

It would be ignorant to believe that an all encompassing statewide law could achieve these goals; therefore it is necessary to allow more local control by a local elected government body.

Duane Brendemuhl

1. The notification procedure was and is inadequate.
2. The landowners should be compensated by the state for the taking of their property.
3. Real estate property tax relief should be provided by the state.
4. Alternative measures should be included for existing buffers that will not meet the new law, but have been established previously.

Richard Androli

Our clients' concern is whether the DNR Map and the statutory land use restrictions (1) constitute compensable temporary regulatory takings by the State of Minnesota or (2) are unenforceable guidelines until the watershed district/county acquires the buffer and pays compensation.

On the one hand, the statutory interpretative claim is that the land use restrictions apply prior to the watershed district/county acquiring and paying compensation for the buffer. Since the triggering events for the land use restrictions are the statutory restrictions and the DNR map, the state is liable to pay just compensation for a temporary regulatory taking. Under both the federal and Minnesota constitutions, just compensation is required for temporary regulatory takings. The taking here is regulatory because the State of Minnesota will not "physically" occupy the buffer; instead, it is regulating the buffer. The taking here is temporary until the watershed district/county acquire the buffer and pay compensation if ever.

On the other hand, the statutory interpretative claim is that the provisions for the watershed district/county to acquire and pay compensation for the buffer shows that the land use restrictions do not apply until that process is completed. So, the land use restrictions are unenforceable guidelines. The farmers can farm as they have until the watershed district/county acquire the buffers and pay compensation.

The Buffer and Soil Loss Statutes, as enacted in 2015 and amended in 2016, leaves open the possibility of either claim. The focus is on the interrelationship between the restrictions on land use prescribed in Minn. Stat. Sec. 103F.48, subdivision 3 and the provisions for "acquisition" by the watershed district/county under Minn. Stat. Sec. 103F.48, subdivision 8 and for "damages" paid by watershed district/county under Minn. Stat. Sec. 103E.315.

The DNR has published a final map of the affected. BWSR is or will be adopting rules for issuance of administrative penalty orders for violating the land use restrictions prescribed in Minn. Stat. Sec. 103F.48, subdivision 3, to be published in the State Register before or on July 1, 2017. Meanwhile, the restrictions of Minn. Stat. Sec. 103F.48, subdivision 3 preventing farming in the buffer strip areas may apply or do not apply depending on how one reads the statute as explained above.

The provisions for "acquisition" by the watershed district/county are found under Minn. Stat. Sec. 103F.48, subdivision 8. The provisions for "damages" paid by watershed district/county are found under Minn. Stat.

Sec. 103E.315. BWSR's Summary and Overview of Amendments (2016) states regarding section 3 of the 2016 amendments which amended Minn. Stat. Sec. 103E.315:

Discussion: The amendment to the public drainage law (Minn. Stat. 103E) has been reviewed and agreed to by the Drainage Work Group and ensures that landowners are fairly treated when they incur the costs of complying with the buffer requirement and the drainage authority later conducts a redetermination of benefits.

Which interpretation of the buffer statutes is applied determines whether farming is still permissible for farmer within the buffer notwithstanding the DNR map. If the land use restrictions apply prior to the watershed district/county acquisition and payment of damages, then the State of Minnesota is liable to pay just compensation for a temporary regulatory taking. But, if the land use restrictions apply only after the watershed district/county acquisition and payment of compensation, then there would be no claim against the State of Minnesota. Importantly, though, under this scenario, the farmer gets to continue to farm as he has until the watershed district/county acquisition and payment of compensation.

Prior to adoption of any rules, the agency needs to resolve this statutory interpretative question.

Erick G. Kaardal, Mohrman Kaardal & Erickson, P.A.

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The incorrect name MUST be corrected.

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Re: The Original PWI List Procedure

The original PWI list procedure took place starting about 1977 and concluded on July 7, 1987. In that 10 year time table, the counties were allowed the privilege of negotiating with the state as to the list that was provided to them from the state. Neither I nor any of our neighbors, nor any member of our mutual ditch group were notified that this procedure was taking place. Because of NOT being aware of what was happening, we were not given a chance to be a part of the negotiations. We certainly would have taken part, had we known.

But certain county commissioners did successfully have their private ditches and wetlands kept off the PWI list. They did NOT accord the same privileges to the majority of the property owners in the county. This was very inappropriate behavior. All affected land owners should have had, and should now have, a part in any

procedure affecting their property. It seems that government staff felt they should be the only ones privy to special privileges.

Therefore, we demand that the natural and altered watercourses "Crane Creek, Section 22, Township 108, Range 22 to section 1 Township 107, Range 22" and "wetlands name and number 81-111, unnamed, Section 28, 29, 30, 31, 32, 33 Township 108 Range 22" Waseca county be removed from the PWI list immediately and permanently.

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Re: Moonan Marsh and Watkins Lake Dam

Moonan Marsh, built by PL566, "Crane Creek Watershed Project", a US federal project, has become a man-made obstacle right in the middle of a natural water course. The Watkins Lake dam, having a permanent concrete stop plank because of unauthorized people manipulating the wood planks, and the DNR controlling water levels substantially above the original set levels in PL566, have resulted in flooding all areas above (up stream) this natural water course system. This has been an on-going battle between the property owners and DNR ever since Moonan Marsh (Crane Creek Watershed) was completed. It's time for DNR to start working with the public to finally achieve the original purpose of the "Crane Creek Watershed Project".

Comment 4

Re: Public Comment Periods

Our government does NOT receive a significant number of comments during open comment periods because there is virtually NO notification conducted by our government. Furthermore, government does NOT want to see any amount of comments presented from the public, because government would then have to deal with the presented comments.

Comment 5

Re: The Name "Crane Creek"

The name "crane Creek" was officially placed on our private ditch on July 7, 1987. This means that the duplicated name does NOT meet the 40 year rule and MUST be corrected to either "unnamed" which DNR refers to it as, or "Blooming Grove Rice Lake Mutual Ditch". Furthermore, the Waseca county official maps show "Crane Creek" in the bed of the waters of both Watkins Lake and Rice Lake. Those same maps show "Crane Creek" as an open ditch connecting our private ditch (the Blooming Grove Rice Lake Mutual Ditch), through Finnely Marsh to Rice Lake. This is absolutely, 100%, fraudulent data.

Comment 6

Re: Denial of Permit to Maintain our Legitimate Drainage System

Since November 12, 2012, the DNR permit 2013-0668 and its additional amended permits, as well as the June 23, 2014 contested case pre-lim meeting, our ditch group has been denied permission to perform maintenance and repair of the outlet portion of our ditch which ends in the Finnely Marsh (approximately 1900 feet). We have NOT received a single legitimate reason for these denials which is required in the application process.

Comment 7

Re: Perfect Natural Filter System

Our private ditch outlets into the Finnely Marsh, and ends there, thus resulting in a positive, natural filtering system, prior to reaching Rice Lake, thus NOT contributing to any negative effect on our environment.

Rollie Norton, Blooming Grove Rice Lake Mutual Ditch

I have a few comments on the buffer section.

I realize that the lake shore requirements are separate and different from ditches and swamps, but I feel that lake shore buffers also need to be addressed and incorporated into the buffer statement.

If farmers are going to be required to have buffers, and we're going to continue to get blamed for lake quality issues, then, for every reason, shore land (houses, lakes, lake front) should also be required to have buffers to protect our lakes. We all know the fertilizer from the lake home owners is 10 fold the rate farmers are using.

As a farmer, and an avid outdoorsman, I think it's a darn shame what's happening to our lakes. They're green by June.

I also find that a lake such as Glacial Lake (most commonly referred to as Minnesota Lake, Faribault County) doesn't turn green, but is fed majorly by field tile.

Please see to it, that the buffer strip law affect land owners of lake shore property.

Adam Knewton, Knewton Soy Products

I would hope that the state make a tougher buffer strip law. I have watched the farm land drained in the 50s, 60s, 70s until now. With all the wet lands gone all the water run thru ditches and rivers in to lakes. It's the least that could be done because clean water is for all us and the future.

Michael Dorman

In regards to the proposed buffer strip policies, I would like to know how designations of public waters, private waters, public waterways and private waterways are arrived at. The designations alone are rather infuriating to grasp and seem trivial and spotty at best.

Additionally, will this proposal essentially put an end to farmers and land owners being able to properly and regularly clear and maintain their privately owned drainage ditches? A properly maintained drainage ditch will prohibit even the heaviest rains from exiting the ditch's banks but a neglected drainage ditch will be more prone to having its waters, during heavy rainfalls and flooding events, to exit the confines of the ditch and flood adjacent farm land which carries the likelihood of washing excess nutrients and herbicides into the water without proper filtration through currently installed drainage tile.

I am concerned that this proposal was put forth by lawmakers and special interest groups who are lacking in knowledge when it comes to how many farmers and landowners already protect both their land and the waters which flow through it. A one-size-fits-all proposal such as this one is riddled with numerous gray areas and unknowns. Additional clarification and a longer window for comments is needed.

Brian Sorenson

Pertaining to 75 acres in Clay County MN, Riverton Township 139N, Range 46W, Section 17, East half of NW quarter. Owned by Paul Crume and Pauline Sannes. We submitted a comment to you from the Clay County Soil & Water Conservation office on June 17, 2016 in regards to the buffer map. The attached files are pictures of the west edge of our property. This is where the buffer map shows a buffer zone is required. The 2nd picture of our land was taken in 1989, 3rd picture on 9/27/90, 4rd picture on 6/7/16, and the 5th

picture on 7/11/16. We do not believe a buffer area is necessary on our land as shown in the buffer map. This productive farm land as shown in these pictures is farmed every year. A buffered drainage ditch runs from highway 9 down the center of section 17 to the west side of section 17. This ditch takes water from the road ditches along highway 9 and not directly from the section of land to the north as the buffer map is drawn to show. There are many areas of other productive land shown in the aerial buffer map where water drains off that do not require a buffer area. We request an onsite inspection and review of the area. Thank you for your attention in this matter.

Paul Crume, Pauline Sannes

Draft Guidance Determining the Top or Crown of a bank.

COMMENTS/QUESTIONS: Don't make up any new terms or guidelines for determining the top of the bank. It should be consistent with the DNR's definition of the "Ordinary High Water Level" (OHW) and the same as the OHW which has been in practice for decades. If there is a question where this is, the SWCD should contact the DNR Area Hydrologist to determine this.

Draft Guidance Measurement of a buffer on a public drainage ditch.

COMMENTS/QUESTIONS: See above comments. There is already a way to determine the top of the bank. It should be consistent with shoreland.

Draft Guidance Grazing and haying of buffers

NOTE: *"Overgrazing of a buffer or traffic by livestock to the point where the vegetation is significantly inhibited or cannot sustain itself could constitute non-compliance with the Buffer Law and may require corrective actions."*

QUESTION/COMMENT: If the above situation occurs, the site would meet the definition of a "feedlot" and not a pasture operation and would be subject to the Feedlot Rules (MN Rules Chapter 7020). New feedlots are not allowed within the shoreland district (300 feet of the top of the bank of the watercourse). If the above situation occurred it would also be a violation of the Feedlot Rules.

Draft Guidance Conservation Reserve Program Exemptions

QUESTION/COMMENT: Does this exemption also cover other federal and state programs that are similar to CRP, such as CREP, RIM, RIM WRP, etc?

Draft Guidance Local Development and Inclusion of Summary Watercourses

***NOTE* Identification of a watercourse on the map does NOT make it subject to the regulatory requirements of the State Buffer Law.**

QUESTION/COMMENT: There is a lot of confusion over these other waters maps and what they are meant to do or be. Are they only meant to include in the water plan to be used when the water authority applies for grants? What is the purpose and significance of including or excluding these watercourses?

Draft Guidance Maintaining Water Quality Benefits

Assessment When a Migration is the a Result of Natural Causes Third and Second Bullet from the bottom of this sections states *"If new crops are planted knowingly after it has been identified that the stream has moved, a landowner or authorized agent may be asked to remove the crop to re-establish the need water quality benefits. If the required protections are not reestablished in the mutually agreed upon timeline prescribed above an SWCD may consider taking corrective action steps."*

COMMENTS/QUESTIONS: What does this mean? Does it mean the SWCD can mow down the crop and plant the buffer themselves? What are “corrective action steps”?

Draft Guidance Vegetation Establishment Goals

Vegetation Establishment Guidance: *“Have no areas larger than 100 square meters dominated with bare ground.”*

QUESTION/COMMENT: This is a large area of bare ground. This area of bare ground should be excluded from being immediately adjacent to the watercourse.

“Moving should be delayed until August 1st and should be mowed to a height of no less than 4-6 inches to minimize bare ground and maintain effectiveness of buffers.”

QUESTION/COMMENT: Is this something that occurs just during establishment or is it supposed to be on an annual basis? Who monitors mowing?

Draft Conditional Compliance Waiver Request

QUESTION/COMMENT: Does NRCS need to verify that the person has signed upon for cost-share? Are they allowed to do that considering privacy data?

Draft Validation of Compliance Request

QUESTION/COMMENT: The buffer law also references the shoreland regulations, but there is no place on the form for shoreland administrators to sign off that the site is compliant with the shoreland program when alternative practices are not used.

Dodge County

County ditches are designed to prevent soil from going into the ditch. There is a berm on them. Grass contains phosphorous and this is released by dormancy or freezing. It is at a rate of 2/3rds pound per acre. Soil attaches the phosphorous and it is tightly held. The real problem is when the phosphorous is in the form which is not attached to soil this soluble phosphorous is what causes algae to grow. Over 95% of all the cities in the US do not remove the phosphorus. The Chesapeake bay has about 20,000,000 people. All this P goes into the bay. People excrete 2 lbs per person per year.

Our state would be in better shape if all these programs would be directed at removal of the P from our towns and cities. Many research projects point to this but it is not published.

Richard Wurtzberger

After reading some of the updates in the Buffer Bill, I am confused by the wording in the bill and since nobody responds to my simple questions I have asked in past e-mails, I am again sending my public comment regarding Governor Dayton’s mandated Buffer Bill. One such question is in Section 5, # 4, it states the buffer width is measured from the top of the crown of the bank or from the edge of the normal water level. In our drainage ditch from the normal water level up, not only is there over 20 plus feet of established grass, the field also slopes away from the ditch, according to the above clause, does this mean we do not have to put in a buffer strip?

This whole situation regarding the Buffer Bill could have been so simple to solve if Governor Dayton and some of our elected officials would have used some common sense by asking these few simple questions. Does your field slope towards a river, drainage ditch or a stream? If you have to put in a buffer strip, will the

water run off flow through the buffer strip or not? If the answer is NO, then there is no need for a buffer strip, if you answer YES, then set up a plan to install a strip.

I think it is a total waste of taxpayer's money to have buffer strips installed next to a river or drainage ditch were the field doesn't even slope towards the river or drainage ditch because there is no possible way that water will magically flow uphill, then continue flowing uphill through a buffer strip and into the river or drainage ditch. I would like somebody explain to me how that can happen and how that situation is going to pollute the rivers and streams?

It is also sad where the fields that slope away from the river, ditch or stream, farmers are going to lose a lot of productive farmland just because it lies next to a river, drainage ditch or stream.

On several occasions I have asked the above questions to people at Soil and Water and the DNR. In response I heard, well then it's good for the pheasant population. So is this Buffer bill about water pollution or the pheasant population?

With the recent heavy rains we have had, if you watch the water run off in certain areas, the water isn't being filtered as it flows through the grass because the water is flowing over the top of the grass.

In hopes of someone being able to understand what I am saying and so I don't have to repeat some of my other comments, I am enclosing some of my past e-mails and pictures for your viewing.

Lee Stern

We support strong programs and policies regarding mandatory buffer strips in Minnesota. Farmers for several decades have been destroying Southern Minnesota's lakes and streams through a lack of concern for safe, clean, quality water for future generations.

Excess levels of Nutrients, phosphorous and nitrogen are evident in the north bay of Fountain Lake, called Bancroft Bay which receives a direct source of water from Bancroft Creek. This body of Fountain Lake is clearly in the final phases of eutrophication.

Attached are photos of the North Bay of Fountain Lake. May they serve as evidence of our concern.

Your attention in this matter is greatly appreciated. If you would like additional photos, or if we can help in any way, please feel free to contact us.

Brian and Debra Blowers

Here are my comments pertaining to the Blooming Grove Rice Lake Mutual Ditch.

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Todd Selvik

The whole Public Waters process has been void of the due process. Right from the beginning, notification of the Public Waters program has not been made known to all who were affected. Personally, I was not made aware of this until a neighbor was forced, approximately 5 years ago, to update his septic system. My Dad, who is deceased, never made mention of the public waters designation. I don't believe anybody, except the Waseca County Commissioners, were aware of the program. Consequently the only ditch that was left out of the PWI, in our township, was one that affected the commissioner of the township.

With this Buffer program people who don't pay taxes on "Our Land" are trying to dictate what we are to do with it. The governor, the DNR, and a lot of other people are over stepping their boundaries. This needs to stop! Those people don't realize that I have been employing buffers that work, that are less then 50ft, on my private ditches for decades. Please reconsider the mandatory 50ft!

Please remove our ditch, Blooming Grove Rice Lake Mutual Ditch, in Waseca County, Blooming Grove Township from the PWI list as it was falsely selected for this list. Because of the PWI designation we are being forced to do or not to do many things that are impractical and don't make sense.

Please consider the rights of all people. The government is not a dictatorship, at least I don't think so.

Bruce Selvik